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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,635	12/04/2003	Masahiro Hasegawa	VX032576	6200
21369	7590	09/09/2004	EXAMINER	
VARNDELL & VARNDELL, PLLC 106-A S. COLUMBUS ST. ALEXANDRIA, VA 22314			DANG, HUNG XUAN	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/726,635	<b>Applicant(s)</b> HASEGAWA, MASAHIRO	
	<b>Examiner</b> Hung X Dang	<b>Art Unit</b> 2873	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.  
2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3,5-9 and 12 is/are rejected.  
7) ☒ Claim(s) 4, 10 and 11 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The amendment filed on 7/21/04 has been entered.

### **Claims Rejection Under 35 USC - 103**

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-9 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over **Pavlak** (6,257,719).

Pavlak discloses right and left spectacle lenses (112 r, 112 s), right and left side pieces (116) for holding the right and left spectacle lenses in front of right and left eyes of a user, respectively; and at least one slit provided above the right and left spectacle lenses to extend horizontally over the right and left spectacle lenses wherein the at least one slit (see figure 7, frame 411 has four slits) is arranged relative to the right and left eyes of the user for viewing objects through the at least one slit of the user.

Pavlak does not intend his device to be used for "correcting presbyopia." However, this feature is an intended use of the Applicant's device and not limiting feature of the claim. The structure of the claim device is the same as that of Pavlak. Therefore, the claimed invention does not distinguish over the Pavlak device.

### **Allowable Subject Matter**

3. Claims 4, 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Reasons For Allowance**

4. The following is an Examiner's Statement of Reasons for Allowance:

The prior art fails to teach a distance of the slit is adjustable as recited in claim 4.

The prior art fails to teach the elongated beam-like member is to said elongated upper frame beam movably at least in an up and down direction so as to change a distance of the slit as recited in claim 10.

The prior art fails to teach the elongated beam-like member is rotatably secured to said elongated upper frame beam at both ends thereof by means of hinges such that the elongated beam-like member is folded on a front surface of the elongated upper frame beam as recited in claim 11.

### **Response To Applicant's argument**

5. Applicant's arguments filed 7/21/04 have been fully considered but they are not persuasive.

Applicant's argued that the brow bar proposed by Pavlak includes an absorbent insert that makes close contact with the user's face, thus the user cannot observe the object through the slit as that required by present claims 1, 6 and 12.

This argument is not persuasive because Figure 7 of Pavlak shows that the slits formed on the frame 411 do not contact the user's head. Therefore the user can see the object through the slit. Therefore the claimed invention does not distinguish over the Pavlak reference.

**6. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

**7.** Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (571) 272-2326.

9/04



HUNG DANG

PRIMARY EXAMINER

TC 2800